

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Ozan Post Office
Ozan, Arkansas

Docket No. A2012-24

ORDER AFFIRMING DETERMINATION

(Issued February 9, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 20, 2011, the Customers of Ozan (Petitioners) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Ozan, Arkansas post office (Ozan post office).² The Final Determination to close the Ozan post office is affirmed.³

II. PROCEDURAL HISTORY

On October 26, 2011, the Commission established Docket No. A2012-24 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On November 4, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ On December 13, 2011, the Postal Service filed an addendum to the Administrative Record.⁶

² Petition for Review received from Customers of Ozan regarding the Ozan, Arkansas post office 71855, October 20, 2011 (Petition).

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No. 928, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 26, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, November 4, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Ozan Arkansas Post Office and Continue to Provide Service by Rural Route Service (Final Determination).

⁶ The Addendum is attached to the United States Postal Service Notice of Filing of Addendum to the Administrative Record, December 13, 2011 (Addendum). The Addendum includes, as Item No. 52, a memo adding costs of replacement service for rural route delivery and cluster box unit installation.

On November 21, 2011, Petitioners filed a participant statement supporting their Petition.⁷ On December 15, 2011, the Postal Service filed comments requesting that the Commission affirm its Final Determination.⁸

III. BACKGROUND

The Ozan post office provides retail postal services and service to 131 post office box customers. Final Determination at 2. Two-hundred-twenty-two (222) delivery customers are served through this post office. The Ozan post office, an EAS-11 level facility, has retail access hours of 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Friday, and 8:00 a.m. to 9:00 a.m. on Saturday. Lobby access hours are 24 hours daily, Monday through Saturday. *Id.*

The postmaster position became vacant on September 27, 2008, when the Ozan postmaster was promoted. *Id.* at 2, 6. A non-career officer-in-charge (OIC) was installed to operate the post office. *Id.* at 2. Retail transactions average 22 transactions daily (26 minutes of retail workload). Post office receipts for the last three years were \$18,371 in FY 2008; \$20,228 in FY 2009; and \$18,720 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$47,879 annually. *Id.* at 4.

After the closure, retail services will be provided by the Nashville post office located approximately 12 miles away.⁹ Delivery service will be provided by rural carrier through the Nashville post office. The Nashville post office is an EAS-20 level post office, with retail hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, and 9:30 a.m.

⁷ Participant Statement received from Monroe Stuart, November 21, 2011 (Participant Statement).

⁸ United States Postal Service Comments Regarding Appeal, December 15, 2011 (Postal Service Comments).

⁹ MapQuest estimates the driving distance between the Ozan and Nashville post offices to be approximately 12.27 miles (18 minutes driving time).

to 11:30 a.m. on Saturday. One-hundred-eighty-seven (187) post office boxes are available. *Id.*

Retail services will also be available at the Washington post office, located approximately 6 miles away.¹⁰ The Washington post office is an EAS-13 level post office, with retail hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, and 7:30 a.m. to 9:00 a.m. on Saturday. Eighty-eight (88) post office boxes are available. *Id.* The Postal Service will continue to use the Ozan name and ZIP Code. *Id.* at 2-3, Concern No. 4.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Ozan post office. They contend that the Ozan community will not receive the required maximum degree of regular and effective postal services after the closure of the Ozan post office. Petition at 1. They are concerned about the safety of leaving money in their mailboxes in order to purchase money orders from the carrier. Participant Statement at 3. They state that closing the post office would harm the Ozan community, particularly its many senior citizens and illiterate residents who rely on postal employees for help. Petition at 1.

Petitioners allege that the Ozan post office cannot be closed simply for operating at a deficit, and ask for an explanation of the Postal Service's reasons for closing the post office. Participant Statement at 2. Petitioners also contend that the Postal Service's calculation of economic savings is inaccurate because the Ozan post office employs an OIC, not a postmaster. *Id.* at 4. They argue that the Postal Service did not consider customer comments and concerns because it accidentally mailed a letter to Representative Mike Ross stating that the Ozan post office would close before the Postal Service issued its Final Determination. *Id.*

¹⁰ MapQuest estimates the driving distance between the Ozan and Washington post offices to be approximately 6.27 miles (9 minutes driving time).

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Ozan post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Ozan community; and (3) the economic savings expected to result from discontinuing the Ozan post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Ozan post office should be affirmed. *Id.* at 16-17.

The Postal Service explains that its decision to close the Ozan post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Ozan community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, the effect on the Ozan community, economic savings, and the effect on postal employees. *Id.* at 6-16.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal

Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in reaching its Final Determination. On May 25, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Ozan post office. Final Determination at 2. A total of 413 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 101 questionnaires were returned. On June 7, 2011, the Postal Service held a community meeting at Ozan Fire Department to address customer concerns. One-hundred-forty-nine (149) customers attended. *Id.*

The Postal Service posted the proposal to close the Ozan post office with an invitation for comments at the Ozan, Washington, and Nashville post offices from June 22, 2011 through August 23, 2011. *Id.* The Final Determination was posted at the same three post offices from September 29, 2011 through October 31, 2011. Administrative Record, Item No. 47.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Ozan, Arkansas is an unincorporated community located in Hempstead County, Arkansas. Administrative Record, Item No. 16. The community is administered politically by the Mayor of Ozan. Police protection is provided by the Hempstead County Sheriff. Fire protection is provided by the Ozan Volunteer Fire Department. The community is comprised of retirees and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally, id.*, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Ozan community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Ozan post office, customers raised concerns regarding the effect of the closure on

the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 4.

Petitioners state that closing the post office would harm the Ozan community, particularly its many senior citizens and illiterate residents who rely on postal employees for help. Petition at 1. The Postal Service responds that services provided at the Ozan post office will be available from the carrier. Postal Service Comments at 12. It asserts that carrier service is beneficial to many senior citizens and others needing special assistance because the carrier can provide delivery and retail service to roadside mailboxes. *Id.*

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Ozan postmaster was promoted on September 27, 2008 and that an OIC has operated the Ozan post office since then. *Id.* at 2. It asserts that after the Final Determination is implemented, the temporary OIC may be separated and that no other Postal Service employee will be adversely affected. *Id.* at 4.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Ozan post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Ozan customers. Postal Service Comments at 6. It asserts that customers of the closed Ozan post office may obtain retail services at the Nashville post office located 12 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Nashville post office. The 131 post office box customers may obtain Post Office Box service at the Nashville post office, which has 187 boxes available. Retail service is also available at the Washington post office, which has 88 post office boxes available. *Id.*

For customers choosing not to travel to the Nashville post office, the Postal Service explains that retail services will be available from the carrier. *Id.* at 3. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioners contend that rural route service will not provide the Ozan community with a maximum degree of effective and regular postal services. Petition at 1. In particular, they are concerned about the safety of leaving money in their mailboxes in order to purchase money orders from the carrier, and state that many elderly and illiterate residents rely on postal employees for help. Participant Statement at 3; Petition at 1. The Postal Service responds that it considered Petitioners' concerns about mail security by stating that customers may place a lock on their mailboxes as a security measure and that the Postal Inspection Service has reported no incidents of mail theft or vandalism in the area. Postal Service Comments at 9-10. The Postal Service contends that the same retail and non-postal services will be available from the carrier without having to travel to another post office. *Id.* at 8.

Petitioners point out that the Postal Service accidentally sent a letter to Representative Ross stating that the Ozan post office would close before the Postal Service issued its Final Determination. Participant Statement at 3. They contend that mailing this letter indicates that the Postal Service did not adequately consider customer comments and concerns. *Id.*

The Postal Service responds that as indicated in the Administrative Record, it subsequently discovered its error and immediately sent an apology and explanation. Postal Service Comments at 3 n.13. It explains that its Arkansas District has a policy of informing members of Congress about local post office closings and uses template letters to ensure consistency. Administrative Record, Item No. 28 at 25. It asserts that the letter was supposed to provide notice of the proposal to close, but the incorrect template letter was sent by mistake. *Id.* at 26. The Postal Service submits that it seriously considered customer comments and that the technical error does not have substantive implications on appeal. Postal Service Comments at 3 n.13.

The Administrative Record includes letters to three members of Congress informing them that the Postal Service made a final determination to close the Ozan post office. Administrative Record, Item No. 28 at 14-16. The letters are dated June 21, 2011, one day before the proposal to close was posted. *Id.* However, the Administrative Record includes e-mails from the Postal Service to the three members of Congress dated June 24, 2011 explaining the error and that the letter had intended to notify them that the proposal to close was posted. The Administrative Record also contains letters to other members of Congress dated June 22, 2011 and June 24, 2011, which state that the Ozan post office discontinuance study “is ongoing, and no final decision has been made.” *Id.* at 3, 12. Thus, the Administrative Record supports the Postal Service’s assertion that it had intended to notify members of Congress about the proposal to close, but inadvertently sent the wrong form letter.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$47,879. Final Determination at 4. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$3,600). *Id.* The Postal Service cites no cost of replacement service or one-time expenses.¹¹

Petitioners raise the issue of the Postal Service’s calculation of economic savings. They allege that the calculation is inaccurate because the Ozan post office employs a part-time OIC at a lower salary than a postmaster and without fringe benefits. Participant Statement at 4.

¹¹ *Id.* In the Addendum, the Postal Service submitted post-record information adding estimated replacement costs of \$9,875 for street delivery and \$9,400 for cluster box units if the Postal Service decides to install them. Item No. 52. As the Commission previously stated, its responsibility in adjudicating appeals of Postal Service determinations to close or consolidate post offices is limited to “the record before the Postal Service in the making of such determination[s].” Docket No. A2011-74, Order No. 1123, Order Remanding Determination, January 10, 2012 at 8 n.13 (*citing* 39 U.S.C. § 404(d)(5)). The Commission has not relied on post-record information when evaluating this appeal.

The Commission has previously observed that the Postal Service should include in its estimate of savings those costs likely to be eliminated by the closing. The Ozan post office postmaster was promoted on September 27, 2008. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. Postal Service Comments at 13-14. Furthermore, notwithstanding that the Ozan post office has been staffed by an OIC for approximately 3 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioners allege that the Postal Service is closing the Ozan post office solely for economic reasons. Participant Statement at 2.

The Commission does recognize that economics may play a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Ozan post office (revenues declining and averaging only 22 retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 2-3.

The Postal Service did not violate the prohibition in section 101(b) on closing the Ozan post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Ozan post office is affirmed.¹²

It is ordered:

The Postal Service's determination to close the Ozan, Arkansas post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹² See footnote 3, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Ozan post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster was promoted on September 27, 2008. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

In addition, the Administrative Record does not appear to adequately address the concerns of the community about the sufficiency of replacement service for the many senior citizens and illiterate residents who currently rely on postal employees for help in conducting transactions. For this reason, I cannot conclude that the Postal Service has satisfied its obligation to consider the effect of such closing or consolidation on the community served by the post office, as required by 39 U.S.C. § 404(d)(2)(A)(i).

As my colleagues note (*supra* at 10, n.10), the Postal Service provided an addendum to the Administrative Record that supplies post-record information. The omission of this information in the Administrative Record provides an indication that the Administrative Record is flawed. Since the Commission has no way of correcting the Administrative Record in our Section 404 review, such correction must be done on remand.

The Commission recently issued its advisory opinion (Docket No. N2011-1) urging the development of a genuine optimization plan. In Ozan, Arkansas, 149 people from a small rural community attended the community meeting to express their support for their post office. Retail revenue in 2010 was higher than in 2008. The level of support for the Postal Service in Ozan indicates that a plan to optimize the future of the retail network should include keeping the Ozan post office open.

The Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Ozan, Arkansas and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since September 2008, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Ozan post office and should be remanded.

Nanci E. Langley